

**AMENDMENTS TO THE CLAIMS:**

The following listing of claims replaces all prior listings, and all prior versions, of claims in the application.

**LISTING OF CLAIMS:**

1. (Currently amended) A non-aqueous secondary battery comprising:  
a positive electrode,  
a negative electrode, and  
electrolytic solution, which is charged or discharged by repeating a reaction of intercalating and deintercalating ions at said positive electrode and said negative electrode, respectively, wherein  
said negative electrode comprises graphite powder having a crystalline structure, and having a fraction of a rhombohedral crystal structure, of the crystalline structure, equal to or less than 10% by weight and a particle size equal to or smaller than 100  $\mu\text{m}$ , and wherein said graphite powder has a fraction of a hexagonal structure equal to or more than 90% by weight.
2. (Cancelled).
3. (Currently Amended) A non-aqueous secondary battery as claimed in claim 1, said graphite powder having been formed from prior graphite powder, having said particle size, with a fraction of rhombohedral crystal structure greater than 10% by weight, and which prior graphite powder has been treated to form said graphite powder with said particle size and having said fraction of a rhombohedral crystal structure equal to or less than 10% by weight.

4. (Previously Presented) A non-aqueous secondary battery as claimed in claim 1, wherein the secondary battery is a lithium non-aqueous secondary battery.

5. (Previously Presented) A lithium non-aqueous secondary battery as claimed in claim 4, wherein the electrolyte solution is a mixed solvent of ethylene carbonate with any one selected from the group consisting of dimethoxyethane, diethylcarbonate, dimethylcarbonate, methylethylcarbonate,  $\gamma$ -butyrolactone, methylpropionate and ethyl propionate, and a lithium salt.

6. (Previously Presented) A non-aqueous secondary battery as claimed in claim 1, wherein said graphite powder has substantially completely the crystalline structure.

7. (New) A non-aqueous secondary battery as claimed in claim 1, wherein the crystalline structure of said graphite powder has some rhombohedral crystal structure, but said rhombohedral crystal structure is contained in the graphite powder in said fraction equal to or less than 10% by weight of the crystalline structure.